

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

---

KATHLEEN P. MULLINIX, )  
Plaintiff, )  
v. ) Civil Action  
KIKI BOGORAD-GROSS and ) No. 04-12684-WGY  
LEONARD P. BOGORAD, as They )  
Are Executors of the Will of )  
Lawrence Bogorad, )  
Defendants. )  
\_\_\_\_\_  
)

**AFFIDAVIT OF LISA M. HODES FILED IN SUPPORT OF  
DEFENDANTS' OPPOSITIONS TO PARTIAL SUMMARY JUDGMENT  
AND CROSS MOTION FOR SUMMARY JUDGMENT**

Lisa M. Hodes, being duly sworn, deposes and states as follows:

1. I am an associate of the firm Sullivan & Worcester LLP, counsel to Defendants Kiki Bogorad-Gross and Leonard Bogorad, as Executors of the Will of Lawrence Bogorad. I make this affidavit on personal knowledge in Defendants' oppositions to Plaintiff's Motion for Partial Summary Judgment and Plaintiff's Cross Motion for Summary Judgment.

2. Annexed to this affidavit as Exhibit A is a true and accurate copy of portions of the deposition transcript of Kathleen P. Mullinix, taken on March 1, 2006.

3. Annexed to this affidavit as Exhibit B is a true and accurate copy of portions of the deposition transcript of Kiki Bogorad-Gross, taken on January 20, 2006.

4. Annexed to this affidavit as Exhibit C is a true and accurate copy of portions of the deposition transcript of Leonard Bogorad, taken on January 19, 2006.

5. Annexed to this affidavit as Exhibit D is a true and accurate copy of the letter dated August 3, 2003 from Kathleen Mullinix to Heather Aman, that was produced in discovery in this case, and is Exhibit 8 to the Mullinix Deposition.

6. Annexed to this affidavit as Exhibit E is a true and accurate copy of the Agreement between Kathleen Mullinix and Heather Aman, dated July 25, 2003, that was produced in discovery in this case, and is Exhibit 9 to the Mullinix Deposition.

7. Annexed to this affidavit as Exhibit F are true and accurate copies of five invoices, dated November 3, 2003, November 24, 2003, January 30, 2004, May 17, 2004, and August 2, 2004, from Heather Aman Design to Kathleen Mullinix, that were produced in discovery in this case, and are Exhibit 10 to the Mullinix Deposition.

8. Annexed to this affidavit as Exhibit G is a true and accurate copy of the Statement of Assets and Liabilities as of December 31, 2002 of Kathleen P. Mullinix, that was produced in discovery in this case, is part of Exhibit 5 to the Mullinix Deposition and was undesignated as confidential by an order of this Court on June 9, 2006.

9. Annexed to this affidavit as Exhibit H is a true and accurate copy of the Financial Statement of Kathleen P. Mullinix, dated February 27, 2003, that was produced in discovery in this case, is part of Exhibit 5 to the Mullinix Deposition and was undesignated as confidential by an order of this Court on June 9, 2006.

10. Annexed to this affidavit as Exhibit I is a true and accurate copy of a letter from Kathleen P. Mullinix to the Board of Directors of 1050 Fifth Avenue, Inc., dated March 11, 2003, that was produced in discovery in this case, is part of Exhibit 5 to the Mullinix Deposition and was undesignated as confidential by an order of this Court on June 9, 2006.

11. Annexed to this affidavit as Exhibit J is a true and accurate copy of the section labeled Personal Information Regarding the Applicant of the application of Kathleen P. Mullinix to the Board of Directors of 1050 Fifth Avenue, Inc., dated February 21, 2003, that was produced in discovery in this case, is part of Exhibit 5 to the Mullinix Deposition and was undesignated as confidential by an order of this Court on June 9, 2006.

Signed under the pains and penalties of perjury this 30<sup>th</sup> day of June, 2006.

/s/ Lisa M. Hodes

Lisa M. Hodes

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on June 30, 2006.

/s/ Lisa M. Hodes

# EXHIBIT A

00001

1 Vol. 1

2

3 UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

4 C.A. NO. 04-12684-WGY

5

6 KATHLEEN P. MULLINIX,

Plaintiff,

vs.

7 KIKI BOGORAD-GROSS and LEONARD P.  
BOGORAD, as They Are Executors of the  
8 Will of Lawrence Bogorad,  
Defendants.

9

10

11 DEPOSITION OF KATHLEEN P. MULLINIX,

12 taken pursuant to Notice under the applicable

13 provisions of the Federal Rules of Civil

14 Procedure on behalf of the Defendants, before

15 Simonne J. Elwood, R.P.R. and a Notary Public

16 in and for the Commonwealth of Massachusetts,

17 at the office of Sullivan & Worcester LLP, One

18 Post Office Square, Boston, Massachusetts,  
commencing on Wednesday, March 1, 2006 at

19 8:41 a.m.

20 NEAL A. SALLOWAY - COURT REPORTERS  
FIVE CARDIGAN ROAD

21

22 WEST PEABODY, MA 01960

23 781-581-3993 - 978-535-0313 - FAX 978-536-3142

00070

1 it?" And I said, "Well, I don't know. Maybe  
2 we should talk about it."

3 And so I think they called me back. I  
4 think the husband called me back the next day  
5 or something, and I don't remember. I think  
6 maybe he and his wife came to look at the  
7 apartment, or the wife came alone because she  
8 hadn't come that day that he came to the  
9 door. I just don't remember. And so he  
10 asked me what I would consider selling it  
11 for.

12 Q Did you answer?

13 A No. I had no idea. So I called my son  
14 and --

15 Q Which one?

16 A Brendan.

17 Q He's the one in the real estate business?

18 A That's right. And I said, "This is nuts.  
19 Should I suggest a price to him?" And he  
20 looked around at the apartments that had sold  
21 in the neighborhood or something, and he  
22 said -- he thought like \$1.2 million would be  
23 a very good price. I had paid \$800,000 for

00074

1 A Yeah.

2 Q And, ultimately, did you agree on a price?

3 A Yes.

4 Q And what did you agree on?

5 A 1.325.

6 Q During the course of that process of

7 discussions with the Aschermans, did you go

8 back to your son, Brendan, and seek his

9 advice?

10 A He thought 1.1 or 1.2 was a reasonable thing

11 to do, you know, that that would be a good

12 price for the apartment. Yeah. I talked to

13 him. I talk to Laurie.

14 Q Your son, Brendan, is in the real estate

15 business in New York, correct?

16 A Well, he works for a real estate investment

17 trust in New York, but he doesn't do

18 business -- I mean, his business is not in

19 New York.

20 Q Am I correct that when you first spoke with

21 your son, Brendan, about the possible sale of

22 the 87th Street condo, he did some

23 investigation or research, is that right?

00075

1 A Yes, which I could have done on line, but I

2 didn't. He did.

3 Q And he advised you that -- I think you said

4 something in the neighborhood of 1.2 million

5 would be a fair price?

6 MS. JERRETT: Objection.

7 A He said --

8 Q Is that right?

9 A He said, "If you can sell the apartment for

10 1.1 or 1.2, that would be -- that would be

11 not a bad thing to do. You should think

12 about it."

13 Q And at the end of the discussions, you

14 received \$1,325,000, correct?

15 A Right.

16 Q I believe you testified that Professor

17 Bogorad made statements to the effect that he

18 didn't like 86th and Lexington?

19 A Right.

20 Q What did he say was wrong with it?

21 A It's a -- He thought the crowd was rough.

22 There are -- There are a lot of homeless

23 people who actually hang out on the corner of

00090

1 Q Did he get anything in exchange for it to

2 your knowledge?

3 A You'd have to ask him that. I don't know.

4 Q Well, he is, as we lawyers say, unavailable.

5 A Right.

6 Q Okay. Let's go back to November of 2002.

7 You looked at an apartment on the 11th floor

8 of 1050 Fifth Avenue, is that correct?

9 A And I also, in November, the date before

10 Thanksgiving saw the apartment that I

11 eventually bought and --

12 Q You anticipated my next question. When did

13 you first take a look at Apartment 15B?

14 A Yeah. The day before Thanksgiving.

15 Q And was that just you and Ms. Durham

16 together?

17 A No, it was not Ms. Durham. That's what I

18 forgot. She had gone off to California for

19 Thanksgiving. She wasn't around. And my

20 son, Brendan, had seen that apartment on the

21 internet, and he called and said, "Did you

22 see that apartment?" And I said, "No." And

23 he said, "You should go look at it." Because

00091

1 I had told him that I liked this apartment  
2 that was on the 11th or whatever it was  
3 floor. And so I think -- I think what I did  
4 was call the -- I think I called the -- God,  
5 I don't remember; whatever broker was  
6 representing the seller. It was in the -- on  
7 the internet thing and asked if I could come  
8 see it.

9 Q And I take it the response was in the  
10 affirmative because you went to see it on the  
11 Wednesday before Thanksgiving 2002, correct?

12 A Right.

13 Q First of all, how did you get there; did you  
14 just walk down the street?

15 A I walked.

16 Q The distance from your 87th Street apartment  
17 to 86th and Fifth is about three long and one  
18 short block, correct?

19 A Yeah.

20 Q And did you meet with anyone there, that is  
21 to say, a broker?

22 A Yes, the broker.

23 Q And do you recall who that was?

00129

1 of his client, was going to meet with me and  
2 whoever the other people were on Monday  
3 morning.

4 Q So is there anything else that you recall  
5 transpiring that day, February 7th, 2003,  
6 concerning Apartment 15B?

7 A I signed the contract.

8 Q You signed a contract that day?

9 A Yeah.

10 Q And was that done at Mr. Kroll's office while  
11 you were still there?

12 A Correct.

13 Q Who prepared the document for you to sign?

14 A Mr. Kroll.

15 Q And while you were there, correct?

16 A Yes.

17 Q When did you leave his office?

18 A 6:00ish.

19 Q And was Professor Bogorad with you the entire  
20 time?

21 A Yes. Yes, he was.

22 Q And that contract document identified you as  
23 the sole purchaser or prospective purchaser

00130

1 of Apartment 15B, correct?

2 MR. JERRETT: Objection.

3 A That's correct.

4 Q And did anything else transpire, or have we  
5 now exhausted your recollection on February  
6 7th, 2003 concerning Apartment 15B?

7 A That's correct.

8 Q So 6:00ish, and I take it 6:00 p.m. or so,  
9 you and Professor Bogorad left Mr. Kroll's  
10 office, is that correct?

11 A Yes.

12 Q Do you recall what you did then?

13 A Yes. We went -- We went home, and then we  
14 had dinner at an Indian restaurant down the  
15 street.

16 Q In the upper east side?

17 A Yep.

18 Q Did he stay around the entire weekend?

19 A Uh-huh. Yes.

20 Q When did he leave New York that -- When did  
21 he next leave New York?

22 A Either Sunday night or Monday morning. I  
23 don't remember which.

00140

1 wanted to figure out which of the two  
2 prospective buyers was more likely to pass  
3 the Board.

4 Q And you're referring in that instance to the  
5 Board of the co-op, correct?

6 A Yeah.

7 Q Was there any discussion -- Well, first of  
8 all, did Mr. Brog say to you, in words or  
9 substance, anything at all about the other  
10 prospective buyers?

11 A No, nothing.

12 Q Nothing at all?

13 A No.

14 Q Do you know if the other prospective buyers  
15 were individual, a couple?

16 A I have no idea.

17 Q Was there any discussion between you and Mr.  
18 Brog concerning your finances or the  
19 financing of the purchase of the apartment?

20 A No.

21 Q Did any money ever come up as a topic?

22 A No, but I had -- What had I done? I had --  
23 Oh, God. I think I had -- I had made a list

00141

1 of accounts I had that I brought, I think. I

2 think I -- But we didn't talk about finance.

3 We just chatted.

4 Q Did you give him that list?

5 A Yeah.

6 Q And you said accounts. Are you talking like

7 banks, securities, things of that nature?

8 A Right.

9 Q Did you have any discussion with Mr. Brog  
10 concerning, you know, the 1050 Fifth Avenue  
11 co-op or its Board or anything along those  
12 lines?

13 A No. He told me that he had been Mr.

14 Maricca's lawyer for 20 years; that was the  
15 seller; 20 or more or something like that;  
16 context kind of thing. M-A-R-I-C-C-A. That  
17 was the seller.

18 Q Have you told us everything you can recall  
19 about your meeting with Mr. Brog?

20 A Yeah.

21 Q What happened next after that meeting in  
22 respect of Apartment 15B?

23 A In the afternoon, I think it must -- I don't

00148

1 one of our summer vacations in New York, and  
2 he said, "You know, here's how I'm thinking  
3 about my estate." And he explained what his  
4 thinking was.

5 Q And what did he explain?

6 A He said that the way he thought about things,  
7 he had -- he had been the, you know, he had  
8 worked and so that the money he and his wife  
9 had accumulated, he had, essentially, what  
10 you call it, earned that money, but it was  
11 for both of them because she didn't work, and  
12 so the way he contemplated what he wanted to  
13 do was that half of whatever the estate was  
14 was his wife, and that would go to the  
15 children, and the other half of it was his,  
16 and he wanted to divide that three ways.

17 Q Did he give you any understanding as to what  
18 the magnitude of his estate was?

19 MS. JERRETT: Objection. During which  
20 time?

21 MR. VARN: At or about this time.

22 A No. He had told me when he was in an endless  
23 process of doing -- setting up that trust

00149

1 that he -- I think Chicago and Harvard are  
2 the beneficiaries, he thought about that  
3 forever, and I knew that there was a  
4 \$1 million going into that trust.

5 Q Apart from that, did you have any  
6 understanding of, basically, what he was  
7 worth?

8 A No. I -- I had a basic understanding of how  
9 much money he had from conversations that we  
10 had in 1998.

11 Q Okay. And what was your understanding from  
12 those 1998 conversations?

13 A He said he had approximately \$5 million.

14 Q Now, if I understand correctly, in 2000, he  
15 told you he wanted to make you a beneficiary,  
16 in essence, one-sixth, correct?

17 A Yeah.

18 Q And you referred to his trust which made  
19 provision for two universities, and I think  
20 you used the words, "endless process"?

21 A Yes.

22 Q When, to the best of your recollection, did  
23 that endless process begin?

00176

1 Q Now, at some point, you -- Actually, I want  
2 to go back to March of 2003 for just a  
3 second, and would you take a look, please, at  
4 Exhibit 5 and, in particular, if you go to  
5 the page that has the stamp 32 at the bottom,  
6 it starts with 15, so it's not too --

7 A Yeah. I see 32.

8 Q And do you see there's some references  
9 towards the bottom to a few individuals  
10 identified as personal references; do you see  
11 that?

12 A Yes.

13 Q Ms. Heller, Mr. Keating, Mr. Lee, Mr. Zorn  
14 and Mr. Arnold. Do you see that?

15 A Uh-huh.

16 Q Are those personal references that you  
17 supplied, you know, of people that you  
18 expected would vouch for you, basically?

19 A Yes.

20 Q Up at the top of that page, do you see this  
21 document is a part of a preprinted form in  
22 which information is typed in; do you see  
23 that?

00177

1 A Yes.

2 Q And do you see in the second line, it says,

3 "Names and Relationship of proposed occupants

4 of the Apartment and ages of children, if

5 any, and schools attending."; do you see

6 that?

7 A Yes.

8 Q And your name is typed in after that?

9 A That's correct.

10 Q There's no reference to Professor Bogorad

11 there, correct?

12 A That's correct.

13 Q Why not?

14 A Because we -- We were advised that since we

15 weren't married, putting Laurie's name on was

16 not -- was not a smart thing to do because

17 people on the Board, somebody might say,

18 "Well, these people aren't married." So I

19 didn't, and the apartment was -- he was not

20 to have any ownership interest in the

21 apartment. His financials were not offered

22 as securing my ability to pay in any way, so

23 we didn't do it.

00178

1 Q Who gave you the advice you just referred to?

2 A My broker.

3 Q Ms. Durham?

4 A Correct. Who received that advice from her  
5 supervisor.

6 Q At Stribling?

7 A Yeah.

8 Q When did Ms. Durham give you that advice?

9 A Just before she submitted the application.

10 Q Did you have any discussion with Professor  
11 Bogorad on that subject matter of basically  
12 not disclosing that he would occupy the  
13 apartment?

14 A Yes.

15 Q And what discussion did you have with him?

16 A I told him what Ms. Durham said, and he said,  
17 "Whatever. Do whatever. It doesn't matter."

18 Q Did you have any discussion with Ms. Durham,  
19 in words or substance, to the effect that,  
20 "Well, what's going to happen when the co-op  
21 finds out that I'm not the only occupant of  
22 this apartment?"

23 MS. JERRETT: Objection.

00179

1 A No.

2 Q Let me see if I understand correctly. Your  
3 testimony is that on the basis of the advice  
4 from Ms. Durham, a real estate broker in New  
5 York, the decision was made not to tell the  
6 whole truth to the Co-Op Board, is that  
7 correct?

8 MS. JERRETT: Objection.

9 A I wouldn't say that.

10 Q Is it not a fact that the decision was made  
11 to mislead the Co-Op Board into the proposed  
12 occupancy of Apartment 15B if you were  
13 permitted to purchase it?

14 MS. JERRETT: Objection.

15 A No.

16 Q You intended, did you not, that Mr. Professor  
17 Bogorad would spend three or four nights a  
18 week in that apartment after you got it fixed  
19 up to your satisfaction, correct?

20 A Yes.

21 Q But the decision was made to not disclose  
22 that intention to the Co-Op Board as part of  
23 the application out of concern that they

00180

1 might reject it, is that correct?

2 A That's correct.

3 MR. VARN: Let's take five minutes.

4 (Break takes place at 1:51 p.m.)

5 (Back on the record at 1:59 p.m.)

6 MR. VARN: Let's go back on the

7 record.

8 Q Ms. Mullinix, as of the spring of late winter  
9 spring of 2003 when you were pursuing a  
10 purchase of Apartment 15B, were you expecting  
11 that any aspect of the costs associated with  
12 that transaction would be paid by Professor  
13 Bogorad?

14 A What transaction?

15 Q Apartment 15B?

16 A I'm not sure. What do you mean?

17 Q I'll rephrase it in a way to try to clear it  
18 up a little bit.

19 As of late winter or early spring of  
20 2003, you had entered into a contract, and  
21 you were taking steps to purchase Apartment  
22 15B, correct?

23 A Yeah.

# **EXHIBIT B**

00001

1                   Volume: I  
2                   Pages: 207  
2                   Exhibits: 1-13

3                   UNITED STATES DISTRICT COURT  
4                   DISTRICT OF MASSACHUSETTS  
5                   CIVIL ACTION No. 04-12684-WGY  
6  
7  
8

9                   -----X  
9                   KATHLEEN P. MULLINIX,  
10                  Plaintiff,  
10                  Vs.

11                  KIKI BOGORAD-GROSS and LEONARD P.  
11                  BOGORAD, as They are Executors  
12                  of the Will of Lawrence Bogorad,  
12                  Defendants.

13                  -----X

14

15                  DEPOSITION of: KIKI BOGORAD-GROSS  
15                  Date: Friday, January 20, 2006  
16                  Time: 10:00 a.m.  
16                  Location: Choate, Hall & Stewart, LLP  
17                  Two International Place  
17                  Boston, MA 02110  
18

19

20                  --- REPORTER: Evelyn M. Slicius, CSR, RPR ---

21

22                  K. L. GOOD & ASSOCIATES  
22                  Registered Professional Reporters  
23                  P.O. BOX 367  
23                  Swampscott, Massachusetts 01907  
24                  Tel. 781-598-6405 \* Fax. 781-598-0815

00048

1 Q. Did he make statements to that effect to you?

2 A. I believe so. I'm not sure he said that

3 exactly, but that was the gist of it.

4 Q. How close in proximity timewise did you and your  
5 father look at these apartments?

6 A. It was probably, you know, it was a short  
7 concentrated period of time.

8 Q. And after he made the decision not to purchase  
9 you either of those apartments did he continue  
10 talking about a possible sale of his house?

11 A. I don't think so.

12 Q. Those are the four issues that you identified as  
13 financial matters with the caveat about the  
14 house sale. Do you recall, during the last five  
15 years of your father's life, having any  
16 additional discussions with him about financial  
17 matters?

18 A. I don't think so other than what my brother  
19 spoke about yesterday about giving the money to  
20 the University of Chicago and Harvard  
21 University, that was in his legal documents, but  
22 that was a wish of his.

23 Q. You recall speaking with your father about that  
24 as well?

00190

1 the sale of her East 87th Street apartment, do  
2 you have any information that your father did  
3 not make such an agreement or promise?

4 A. No, I have no information either way.

5 Q. Same thing Ms. Mullinix's claim that he did,  
6 and you have no information that he didn't?

7 A. Right.

8 Q. Trying again to expedite this, with respect to  
9 those four claims, do you believe that  
10 Ms. Mullinix is lying?

11 MR. VARN: Objection.

12 A. I have no way of knowing.

13 Q. Do you believe that she is lying?

14 MR. VARN: Objection.

15 A. I have no way of knowing.

16 Q. I'm not asking whether you know, I'm asking what  
17 you believe.

18 A. Could you rephrase the question please, restate  
19 the question.

20 Q. Is it because I've lumped it together?

21 A. No, the lumping together I understand, that is  
22 fine.

23 Q. With respect to her four claims, do you believe  
24 that Ms. Mullinix is lying?

00191

1 MR. VARN: Objection.

2 A. Lying lying about what? The claims?

3 Q. With respect to the four claims, do you believe

4 that Ms. Mullinix is lying about what she says

5 your father committed to do or promised to do?

6 MR. VARN: Objection.

7 A. I have no way of knowing.

8 Q. Again, I'm not asking what you know, I'm asking

9 what you believe.

10 MR. VARN: Objection. You pre-suppose

11 that she has formed an opinion on the subject,

12 that is the problem with the question.

13 Q. Have you formed an opinion on the subject?

14 A. I don't believe that she's lying that he said

15 that he would do it, I just don't know that that

16 was his intention.

17 Q. And when you say you "don't know that that was

18 his intention," what do you mean by that?

19 A. I suspect that if he were -- if he had lived, he

20 would have paid for it as a gift. But I also

21 believe that because he provided for her in his

22 estate documents, that that was the equivalent,

23 that they were one and the same.

24 Q. And when you say that he provided for her in the

# EXHIBIT C

00001

1                   Volume: I  
2                   Pages: 254  
2                   Exhibits: 1-15

3                   UNITED STATES DISTRICT COURT  
4                   DISTRICT OF MASSACHUSETTS  
5                   CIVIL ACTION No. 04-12684-WGY  
6  
7  
8

9                   -----X  
9                   KATHLEEN P. MULLINIX,  
10                  Plaintiff,  
10                  Vs.

11                  KIKI BOGORAD-GROSS and LEONARD P.  
11                  BOGORAD, as They are Executors  
12                  of the Will of Lawrence Bogorad,  
12                  Defendants.

13                  -----X

14

15                  DEPOSITION of: LEONARD P. BOGORAD  
15                  Date: Thursday, January 19, 2006  
16                  Time: 10:00 a.m.  
16                  Location: Choate, Hall & Stewart, LLP  
17                  Two International Place  
17                  Boston, MA 02110  
18

19

20 --- REPORTER: Evelyn M. Slicius, CSR, RPR ---

21

22                  K. L. GOOD & ASSOCIATES  
22                  Registered Professional Reporters  
23                  P.O. BOX 367  
23                  Swampscott, Massachusetts 01907  
24                  Tel. 781-598-6405 \* Fax. 781-598-0815

00026

1 those sounded reasonable. And he had legal  
2 advice and he seemed to understand this better  
3 than I did. And certainly whatever he wanted to  
4 do was fine with me.

5 Q. Do you recall, roughly, when that conversation  
6 occurred?

7 A. I don't, I'm sorry.

8 Q. Was it before the e-mail communication regarding  
9 including Ms. Mullinix in his estate plan?

10 A. I'm not sure.

11 Q. What do you recall him telling you about this  
12 Charitable Remainder Trust?

13 A. Basically that it was -- I guess it was the  
14 money from the IRA, I believe, or IRAs, that  
15 would otherwise -- if the tax had not been paid  
16 on it originally and, therefore, there would be  
17 a lot of tax due on these, and that it made more  
18 sense to contribute the principal to Harvard  
19 University and the University of Chicago; and  
20 that the heirs, or I think Kiki and I  
21 personally, I can't remember the structure  
22 exactly, would receive interest or income on  
23 those, on that principal, and that this would be  
24 better for all concerned than just including it

00027

1 in the estate. It seemed reasonable to me. But

2 I never heard of that before.

3 Q. Other than those statements that you've just

4 alluded to, do you recall anything additional

5 that your father told you about this Charitable

6 Remainder Trust?

7 A. I don't recall. I'm sure it was a longer

8 conversation, but that's all I remember about

9 it.

10 Q. And just so I'm clear, other than those two

11 communications you referenced -- the first being

12 the e-mail communication regarding including

13 Kathleen Mullinix in his estate plan, and the

14 second communication which may have been before

15 or after regarding the Charitable Remainder

16 Trust -- can you recall any other time that you

17 and your father spoke about his estate plan?

18 A. That's all I recall.

19 Q. And other than those two occasions and the

20 periodic occasion where you would discuss who

21 was paying for a dinner bill or various expenses

22 relating to trips, can you recall any other

23 instance where your father spoke with you about

24 financial matters?

# **EXHIBIT D**

7-02-2004 1:46PM FROM

P. 4

**Kathleen P. Mullinx  
1050 Fifth Avenue, Apt. 15B  
New York, NY 10028**

kathleenpmullinx@yahoo.com

August 3, 2003

Heather Aman Design  
347 West 36<sup>th</sup> Street, Suite 1501  
New York, NY 10018

Dear Heather,

I enclose two signed copies of the Agreement between Heather Aman Designs and me for your services with respect to the remodeling and renovation of my apartment. Note that I have added "the foyer" to the scope, and initialed the change. We had discussed adding the same, but the change did not make it into the current document. In addition, I enclose a check in the amount of \$1500.00 as a retainer for the project.

Please initial the change and return one signed copy to me.

I am very excited about the project; I look forward to working with you as we see a wonderful transformation of the space that will be my new home.

With best regards,

*Kathy*

KPM 0182

# **EXHIBIT E**

HEATHER AMAN

July 25, 2003

Ms. Kathleen Mullinx  
1050 Fifth Avenue, Apt. 15B  
New York, NY 10028

Dear Kathy:

It was a pleasure meeting with you last week to discuss the renovation of your new home. I am happy to submit a proposal for Architectural Design Services for your Project. The following shall constitute the Agreement between Kathleen Mullinx ("Owner") and Heather Aman Design ("HAD").

*KPM Foyer*  
**Project Description:** The Project is to consist of the remodeling and renovation of Apartment 15B at 1250 Fifth Avenue and will encompass the Kitchen, Bathrooms, Bedrooms, Living and Dining Rooms, Closets, and Attendant Plumbing and Electrical Work.

**Proposed Scope of Architectural Design Services (divided by phase)**

Note: The percentages herein will be used to estimate payments for services

**A. Schematic Design**

To be performed by Raynor Warner and the Casali Group, Inc.

**B. Design Development (25%)**

1. Dimensional issues resolved
2. Plans and interior elevations drawn to scale
3. Final fixtures, fittings, appliances and materials determined
4. Critical system and code issues resolved
5. Arrangement for expediting services and asbestos inspection

**C. Construction Documents (45%)**

1. Preparation of detailed drawings and specifications for the negotiation of the construction contract
2. Submissions to the Managing Agent and the NYC Department of Buildings to obtain permit

**D. Negotiation of Contract (5%)**

1. Invitation to bidders including site walk-throughs
2. Analysis of contractor bids and final selection of contractor
3. Coordination of Owner/Contractor contract documents

**E. Construction Administration (25%)**

1. Site meetings as required to review contractor's work
2. Administration of the construction contract
3. Review and certification of contractors' requests for payment

**Notes:**

1. Owner will approve pertinent drawings and documents at the end of each phase.

347 WEST 36<sup>TH</sup> STREET, SUITE 1501, NEW YORK, NY 10018  
T 212.738.0480 F 212.216.9317

2. Regarding construction costs, it is recognized that neither the Owner nor HAD can control the cost of labor, materials or equipment or the contractor's methods of determining bid prices.
3. During construction, HAD shall have access to all areas where work is in preparation or progress.
4. HAD does not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Project since these are solely the contractor's responsibility under the Contract for Construction (separate document).
5. The drawings, specifications and other documents prepared by HAD for this Project are for use solely with respect to this Project. HAD retains all common law, statutory and other reserved rights, including copyright. The Owner shall be permitted to retain copies of HAD drawings, specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project.
6. The services of engineers, expeditors, asbestos inspectors or special consultants required by the Owner or by the unique demands of the Project, such as acoustical, audio-visual, HVAC, security, etc. shall be retained directly by the Owner at a cost separate from HAD compensation.
7. The project is a renovation which may uncover unanticipated asbestos or asbestos-related material. Both the Owner and HAD recognize that the uncovering of such material may require the retention of separate experts to identify and rectify such finding. Such experts shall be retained directly by the Owner at a cost separate from HAD compensation. Neither the Owner nor HAD may seek claims against each other should asbestos or related materials be found.
8. This agreement may be terminated by either party upon seven days written notice. In the event of termination, HAD shall be compensated for services performed prior to termination. Drawings and documents developed by HAD will not be unreasonably withheld from Owner at termination.
9. Claims, disputes or other matters in question between the Owner and HAD arising from this agreement shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect.

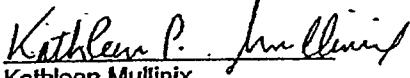
The Fee for Architectural Design Services outlined above is \$30,000. Invoices will be issued monthly or at the end of each phase, at the discretion of HAD, and will be based on percentage of completion. A retainer of \$1,500 is required to start and will be credited to Owner's final payment.

Reimbursable expenses, including but not limited to express mail, messenger services and blueprinting will be billed to you at cost.

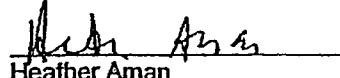
Should you request substantial changes or substantial revisions to work previously approved the additional work will be billed at a rate of \$120 per hour.

I look forward to working with you on this project. If you are in agreement with the terms outlined in this proposal, please sign below and return the original to me. If you have questions or wish to discuss any of the above, please call me.

Agreed and accepted by:

  
Kathleen P. Mullinx

Agreed and accepted by:

  
Heather Aman

# **EXHIBIT F**

**HEATHER AMAN DESIGN**

November 3, 2003

Ms. Kathleen Mullinix  
 1050-Fifth Avenue, Apt. 15B  
 New York, NY 10028

**Project: Mullinix Residence**  
**1050 Fifth Avenue, Apt. 15B**

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<b>Total Fee for Architectural Services</b>	\$ 30,000
<b>Retainer Received</b>	\$ 3,000

Statement of architectural services rendered August 4, 2003 through October 31, 2003

**WORK COMPLETED TO DATE: 20%**

Billing for Work Completed @ 20% of \$30,000 =	\$ 6,000.00
Less All Fee Payments Received (excluding retainer)	\$ 00.00

<b>Total Fee Due</b>	\$ 6,000.00
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Reimbursable Expenses	\$ 00.00
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<b>TOTAL PAYMENT DUE</b>	\$ 6,000.00
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347 WEST 36<sup>TH</sup> STREET, SUITE 1501, NEW YORK, NY 10018  
 T 212.736.0480 F 212.216.9317

**HEATHER AMAN DESIGN**

November 24, 2003

Ms. Kathleen Mullinix  
1050 Fifth Avenue, Apt. 15B  
New York, NY 10028

Project: **Mullinix Residence**  
1050 Fifth Avenue, Apt. 15B

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<b>Total Fee for Architectural Services</b>	\$ 30,000
<b>Retainer Received</b>	\$ 3,000

Statement of architectural services rendered August 4, 2003 through November 21, 2003

**WORK COMPLETED TO DATE: 25%**

Billing for Work Completed @ 25% of \$30,000 =	\$ 7,500.00
Less All Fee Payments Received (excluding retainer)	\$ 00.00

<b>Total Fee Due</b>	\$ 7,500.00
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<b>Reimbursable Expenses</b>	\$ 00.00
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<b>TOTAL PAYMENT DUE</b>	\$ 7,500.00
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347 WEST 36<sup>TH</sup> STREET, SUITE 1501, NEW YORK, NY 10018  
T 212.736.0480 F 212.216.0317

**HEATHER AMAN DESIGN****January 30, 2004**

Ms. Kathleen Mullinix  
1050 Fifth Avenue, Apt. 15B  
New York, NY 10028

**Project: Mullinix Residence**  
1050 Fifth Avenue, Apt. 15B

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<b>Total Fee for Architectural Services</b>	\$ 30,000
<b>Retainer Received</b>	\$ 3,000

Statement of architectural services rendered November 24, 2003 through January 30, 2004

**WORK COMPLETED TO DATE: 50%**

Billing for Work Completed @ 50% of \$30,000 =	\$ 7,500.00
Less All Fee Payments Received (excluding retainer)	\$ 7,500.00

<b>Total Fee Due</b>	\$ 7,500.00
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<b>Reimbursable Expenses</b>	\$ 00.00
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<b>TOTAL PAYMENT DUE</b>	\$ 7,500.00
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**HEATHER AMAN DESIGN****May 17, 2004**

**Ms. Kathleen Mullinix  
1050 Fifth Avenue, Apt. 15B  
New York, NY 10028**

**Project: Mullinix Residence  
1050 Fifth Avenue, Apt. 15B**

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<b>Total Fee for Architectural Services</b>	<b>\$ 30,000</b>
<b>Retainer Received</b>	<b>\$ 3,000</b>

**Statement of architectural services rendered January 30, 2004 through May 14, 2004**

**WORK COMPLETED TO DATE: 75%**

<b>Billing for Work Completed @ 75% of \$30,000 =</b>	<b>\$ 22,500.00</b>
<b>Less All Fee Payments Received (excluding retainer)</b>	<b>\$ 15,000.00</b>

<b>Total Fee Due</b>	<b>\$ 7,500.00</b>
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<b>Reimbursable Expenses</b>	
<b>Regraphics</b>	<b>\$ 412.53</b>
<b>Messenger</b>	<b>\$ 70.65</b>
<b>Fedex</b>	<b>\$ 29.26</b>

<b>Total Reimbursables</b>	<b>\$ 512.44</b>
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<b>TOTAL PAYMENT DUE</b>	<b>\$ 8,012.44</b>
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347 WEST 36<sup>TH</sup> STREET, SUITE 1501, NEW YORK, NY 10018  
T 212.738.0480 F 212.216.9317

KPM 0076

**HEATHER AMAN DESIGN**

August 2, 2004

Ms. Kathleen Mullinix  
 1050 Fifth Avenue, Apt. 15B  
 New York, NY 10028

Project: **Mullinix Residence**  
 1050 5<sup>th</sup> Avenue, Apt. 15B

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Construction Contract	\$ 350,295
Total Fee for Architectural Services	\$ 30,000
Retainer Received	\$ 1,500

Statement of architectural services rendered May 17, 2004 through July 30, 2004

**WORK COMPLETED TO DATE: 85%**

Billing for Work Completed @ 85% of \$30,000 =	\$ 25,500.00
Less All Fee Payments Received (excluding retainer)	\$ 22,500.00
<b>Total Architectural Fee Due</b>	<b>\$ 3,000.00</b>

<b>Furnishes, Finishes &amp; Equipment (FF&amp;E)</b>	
FF&E purchased to date	\$ 21,549.14
Fee @ 15%	\$ 3,232.37
Less Furnishings Fee Payments Received	\$ 0.00
<b>Total Furnishings Fee Due</b>	<b>\$ 3,232.37</b>

<b>Reimbursable Expenses</b>	
Ricky's Runners (delivery)	\$ 8.95
<b>Total Reimbursables</b>	<b>\$ 8.95</b>

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<b>TOTAL PAYMENT DUE</b>	<b>\$ 6,241.32</b>
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 T 212.736.0480 F 212.216.9317

KPM 0077

# **EXHIBIT G**

**CORNICK, GARBER & SANDLER, LLP**  
Certified Public Accountants

**KATHLEEN P. MULLINIX**

**STATEMENT OF ASSETS AND LIABILITIES**

**AS AT DECEMBER 31, 2002  
(AT MARKET VALUE)**

**ASSETS**

Cash and money market funds	\$ 480,551
Investment in marketable securities	983,025
Due from stockbrokers	151,382
2002 income tax refunds receivable	14,123
Residential property:	
Condominium apartment in New York City	1,325,000
Jewelry, furnishings, clothing and personal property	60,000
Interest in employee benefit plans and individual retirement accounts	<u>994,840</u>
Total assets	<u>4,008,921</u>

**LIABILITIES**

Mortgage on condominium	600,261
Bear Stearns Securities Corp. - margin account	<u>106,819</u>
Total liabilities	<u>707,080</u>

<b>EXCESS OF ASSETS OVER LIABILITIES</b> <b>(BEFORE ESTIMATED INCOME TAXES ON EXCESS OF ASSETS OVER THEIR INCOME TAX BASES)</b>	<u>\$3,301,841</u>
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Attention is directed to the accountants' compilation report relating to this statement.

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# EXHIBIT H

FINANCIAL STATEMENTName(s) Kathleen MullinxAddress 170 East 87<sup>th</sup> Street, New York, NY 10128

The following is submitted as being true and accurate statement of the financial condition of the undersigned on the 27<sup>th</sup> day of February, 2003.

ASSETS		LIABILITIES			
		Applicant	Co-Applicant	Applicant	Co-Applicant
Cash in Banks )	480,551			Notes Payable:	
Money Markets Fund-Combined )				To Banks	
Contract Deposit				To Relative	
Investments: Bonds & Stocks - see schedule	983,025			To Others	
Investment in Own Business				Installment Accounts Payable:	
Accounts & Notes Receivable	165,505			Automobile	
Real Estate Owned-see schedule	1,325,006	*		Other	
Year Make				Other Accounts Payable	
Automobiles:				Mortgages Payable on Real	
Personal Property & Furniture	60,000			Estate - see schedule	600,261
Life Insurance				Unpaid Real Estate Taxes	
Cash Surrender Value				Unpaid Income Taxes	
Retirement Funds/IRA -total	994,840			Chattel Mortgages	
401K				Loans on Life Insurance Policies	
KEOGH				(Include Premium Advances)	
Profit Sharing/Pension Plan				Outstanding Credit Card Loans	
Other Assets				Other Debts - Itemize	106,819 Margin Acct.
<b>TOTAL ASSETS</b>	<b>4,008,921</b>			<b>TOTAL LIABILITIES</b>	<b>707,080</b>
<b>COMBINED ASSETS</b>				<b>NET WORTH</b>	<b>3,301,841</b>
<b>SOURCE OF INCOME</b>				<b>TOTAL LIABILITIES &amp; NET WORTH</b>	<b>4,008,921</b>
Base Salary	450,000			<b>COMBINED</b>	
Overtime Wages				<b>CONTINGENT LIABILITIES</b>	
Bonus & Commissions				As Endorser or Co-Maker on Notes	\$
Dividends and Interest Income				Alimony	\$
Real Estate Income (Net)				Child Support	\$
Other Income - Itemize				Are you defendant in any legal action?	\$
<b>TOTAL</b>	<b>450,000</b>			Are there any unsatisfied judgments?	\$
<b>GENERAL INFORMATION</b>				Have you ever taken bankruptcy? Explain	\$
Personal Bank Accounts at JP Morgan Chase Bank	Redacted			<b>PROJECTED EXPENSES / MONTHLY</b>	
Savings & Loan Accounts at North Fork Bank	Redacted			Maintenance	\$ 1,933.93
Purpose of Loan Mortgage				Apartment Financing	\$ 3,703.93
				Other Mortgages	\$
				Bank Loans	\$
				Auto Loan	\$
				<b>TOTAL</b>	<b>\$ 5,637.86</b>

\*Contract signed, closing 3/27/2003

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**FINANCIAL STATEMENT**

PAGE 4

Name(s)

Address

The following is submitted as being a true and accurate statement of the financial condition of the undersigned on  
the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_.



ASSETS			LIABILITIES				
		Applicant	Co-Applicant			Applicant	Co-Applicant
Cash in banks				Notes Payable:			
Money markets Funds				To Banks			
Contract Deposit				To Relative			
Investments: Bonds & Stocks - see schedule				To Others			
Investment in Own Business				Installment Accounts Payable:			
Accounts and Notes Receivable				Automobile			
Real Estate Owned - see schedule				Other			
Year      Make				Other Accounts Payable			
Automobiles:				Mortgages Payable on Real			
Personal Property & Furniture				Estate - see schedule			
Life Insurance				Unpaid Real Estate Taxes			
Cash Surrender Value				Unpaid Income Taxes			
Retirement Funds/IRA				Chattel Mortgages			
401K				Loans on Life Insurance Policies (Include Premium Advances)			
KEOGH				Outstanding Credit Card Loans			
Profit Sharing/Pension Plan				Other Debts - itemize			
Other Assets				<b>TOTAL LIABILITIES</b>			
<b>TOTAL ASSETS</b>				<b>NET WORTH</b>			
<b>COMBINED ASSETS</b>			<b>TOTAL LIABILITIES</b>			<b>COMBINED</b>	
<b>SOURCE OF INCOME</b>			<b>&amp; NET WORTH</b>			<b>CONTINGENT LIABILITIES</b>	
		Applicant	Co-Applicant				
Base Salary	\$	\$				As Endorser or Co-maker on Notes	\$
Overtime Wages	\$	\$				Alimony Payments (Annual)	\$
Bonus & Commissions	\$	\$				Child Support	\$
Rentals and Interest Income	\$	\$				Are you defendant in any legal action?	
Real Estate Income (Net)	\$	\$				Are there any unsatisfied judgments?	
Other Income - itemize	\$	\$				Have you ever taken bankruptcy? Explain:	
<b>TOTAL</b>	\$	\$					
<b>GENERAL INFORMATION</b>			<b>PROJECTED EXPENSES / MONTHLY</b>				
		Applicant	Co-Applicant				
Personal Bank Accounts at				Maintenance	\$		
Savings & Loans Accounts at				Apartment Financing	\$		
Purpose of Loan				Other Mortgages	\$		
				Bank Loans	\$		
				Auto Loan	\$		
				<b>TOTAL</b>	\$		

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## **SCHEDULE OF BONDS AND STOCKS**

**SCHEDULE OF REAL ESTATE**

**SCHEDULE OF NOTES PAYABLE**

**Specify any assets pledged as collateral, including the liabilities they secure.**

To Whom Payable	Date	Amount	Due	Interest	Pledged as Security
Bear Stearns Margin Account		106,819		4-1/4%	

The foregoing statements and details pertaining thereto, both printed and written, have been carefully read and the undersigned  
hereby solemnly declares and certifies that the same is a full and correct exhibit of my/our financial condition.

Date February 27, 2003

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Signature Kathleen P. Mullinix

**Signature**

# EXHIBIT I

Kathleen P. Mullinix

170 E. 87<sup>th</sup> St  
New York, NY 10128

212-828-1595  
[kmullinix@nyc.rr.com](mailto:kmullinix@nyc.rr.com)

March 11, 2003

Board of Directors  
1050 Fifth Avenue, Inc.  
1050 Fifth Avenue  
New York, NY 10128

Dear Ladies and Gentlemen:

The biotechnology company that I founded in 1987, Synaptic Pharmaceutical Corporation, was sold in a transaction that closed in March 2003. In addition to the conversion of my shares of Synaptic stock to cash, I will receive payment for my "in the money" options in the amount of approximately \$200,000 later this year.

I have recently started a biotechnology consulting practice focused on advising "start-up" companies in the biotechnology sector. I estimate that in the first year of this business, which started in late January of this year, my income will be approximately \$450,000.

The initial project of my consulting practice is with HDMR Discovery, Inc., a drug discovery company that is based on discoveries of scientists at Princeton University. I am acting as "Interim CEO" of the company, a position that involves an analysis of the company's intellectual property and the development of its business and financial strategies. This will be a three phase program that will occupy approximately 25% of my time for six months and that will involve payment to me of approximately \$125,000. I plan to start another project during the next month and am assessing my interest in several additional projects that will fill my schedule for the next one to two years.

Additionally, with respect to my financial statement, I note that with the death of my mother last week I have inherited approximately \$400,000, which will be additive to my income this year.

I do not plan to take income from my investment portfolio for the foreseeable future but, rather, I plan to continue to work and generate income from my activities in the biotechnology sector.

Sincerely yours,

*Kathleen P. Mullinix*

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# EXHIBIT J

PERSONAL INFORMATION REGARDING APPLICANT(s)DATE: 2/21/03APPLICANTCO-APPLICANT

Name:

Kathleen P. Mullinix

Address:

170 East 87th Street, Apt. W15D  
New York, NY 10128

Dates of Residence:

July, 1999 to present

Home Phone #:

(212) 828-1595

Office #:

( ) Same

Social Security #:

Redacted

Citizenship:

USA

Occupation:

Biotechnology Consultant

Employer:

Self-employed

Address:

170 East 87th StreetNew York, NY 10128

Business Phone #:

(212) 828-1595

Nature of Business:

Consultancy to Biotechnology Companies

Period of Employment:

Sept. 2002 to present

Position Held:

PresidentPrior employer and  
position or residence  
if less than 3 years:Synaptic Pharmaceutical Corporation 1987-2002President and CEOIncome estimate for  
this year:\$450,000

Actual income last year:

\$1,040,194

Educational Background:

Ph.D., Columbia UniversityPostdoctoral Fellowship, Harvard UniversityB.A. Trinity College

OR SALE OF:

1050 Fifth Avenue

ADDRESS

15B

APT #

Annabelle P. Mariaca and  
Alberto C. Mariaca  
SELLER

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ADDITIONAL INFORMATION REGARDING APPLICANTSName(s) cooperative stock would be held in: Kathleen P. MullinixNames and Relationship of proposed occupants of the Apartment and ages of children, if any, and schools attending:  
Kathleen P. Mullinix

Names of anyone in the building known to Applicant: \_\_\_\_\_

Are any pets to be maintained in the Apartment, if yes indicate number and kind: NoName of all clubs and society memberships, fraternities and honorary societies to which applicant belongs. Board of Directors  
The Jackson Laboratory; American Society of Biological Chemists; American  
Society of Cell and Molecular Biology; American Chemical Society**REFERENCES****LANDLORD:**The Gotham Condominium/Equity Mgt. Address: 170 East 87th Street  
Occupancy from: 7/99 to present New York, NY 10128Previous Landlord: 975 Park Avenue Corp/ Greenthal Address: 975 Park Avenue  
Occupancy from: 4/94 to 7/99 New York, NY 10028**PERSONAL REFERENCES:****APPLICANT**

1. Name Ms. Anne Heller  
Address 20 E. 74th St., NY, NY 10021
2. Name Mr. Dwight M. Keating  
Address 2162 Blairmont Drive  
Pittsburgh, PA 15241
3. Name Mr. Dwight Lee  
Address 530 Fifth Ave., NY, NY 10036
4. Name Dr. Sandra Panem, Cross Atlantic Partners, 551 Madison Ave., NY, NY 1002

**CO-APPLICANT**

1. Name \_\_\_\_\_  
Address \_\_\_\_\_

**BUSINESS AND PROFESSIONAL REFERENCES****APPLICANT**

1. Name Mr. Richard Zorn  
Benchmark Capital Advisors, Inc.  
Address 750 Lexington Ave., NY, NY 10022
2. Name Robert Arnold, Cornick,  
Garberst Sandler LLP  
Address 630 Third Avenue, NY, NY 10017
3. Name \_\_\_\_\_  
Address \_\_\_\_\_

**CO-APPLICANT**

1. Name \_\_\_\_\_  
Address \_\_\_\_\_
1. Name \_\_\_\_\_  
Address \_\_\_\_\_
1. Name \_\_\_\_\_  
Address \_\_\_\_\_

FOR SALE OF: 1050 Fifth Avenue  
ADDRESS15B  
APT #Annabelle P. Mariaca and  
Alberto C. Mariaca  
SELLER

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